

DEPARTMENT OF HEALTH

NO. 3000

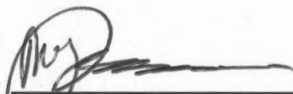
3 February 2023

PHARMACY ACT, 1974 (ACT NO. 53 OF 1974)

REGULATIONS RELATING TO THE ELECTION OF MEMBERS OF THE SOUTH AFRICAN
PHARMACY COUNCIL: AMENDMENT

The Minister of Health intends, in consultation with the South African Pharmacy Council, in terms of section 49(1)(a) and (3), read with section 5 of the Pharmacy Act, 1974 (Act No. 53 of 1974), to make the regulations in the Schedule.

Interested persons are invited to submit substantiated comments or representations in writing on the proposed amendments to the Regulations, to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Public Entities Governance, Ms M Mushwana, MushwM@health.gov.za and godfrey.tsebe@health.gov.za), within three months of the date of publication of this Notice.



DR. M.J. PHAAHLA, MP
MINISTER OF HEALTH

DATE 11/01/2023

SCHEDULE

GENERAL EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing enactments.
- [] Words in brackets indicate deletion in existing enactments

SCHEDULE

Definition

1. In these regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context otherwise indicates—
 “Regulations” means the Regulations Relating to the election of members of the South African Pharmacy Council, published under Government Notice No. R. 823 of 19 June 1998.

Amendment of regulation 1 of Regulations

2. Regulation 1 of the Regulations is hereby amended by—
 (a) the insertion of the following definitions:

“‘electronic’ means any form of electronic technology that generates, stores, and processes data;

‘electronic voting’ means voting that uses electronic means to manage casting and counting ballots.”

- (b) the insertion of the following definition after “returning officer”:

“‘signature’ means inputting a signature or name or initials, including an electronic image of a signature or electronic signature appended by way of inserting a relevant code, password or personal identification number, including but not limited to, a one-time-pin (OTP), and sign shall bear the same meaning.”

Amendment of regulation 2

3. Regulation 2 of the Regulations is hereby amended –

- (a) by substitution for sub-regulation 2(4) of the following sub-paragraph:

“The returning officer, the officers appointed by him or her and the members of the body contemplated in sub-regulation (3) shall make a declaration on oath or affirmation in a form as determined by the returning officer.”

Amendment of regulation 3

4. Regulation 3 of the Regulations is hereby amended by the deletion of the words “in the form set out in Annexure B” from sub-regulation 3(1).

Amendment of regulation 4

5. Regulation 4 of the Regulations is hereby amended by –

- (a) the substitution of sub-regulation (1) for the following:

"4(1) Each candidate shall be nominated on a nomination form, as determined by council, and nominations must reach the returning officer not later than the time and date determined by the returning officer in that form."

(b) the substitution of sub-regulation (4) for the following:

"4(4) Simultaneously with the lodging of a nomination, or not later than the time and date contemplated in regulation 4(1), a candidate shall lodge the following documentation with the returning officer:

- (a) His or her consent to the nomination.
- (b) Proof, to the satisfaction of the returning officer, of South African citizenship.
- (c) A *curriculum vitae* of not more than 400 words in English.
- (d) An electronic, head and shoulders passport photograph.

(c) By substitution of subregulation 5(c) of the following:

"4(5)(c) If a [validity] validly nominated candidate dies before the date of publication of the list of candidates in the *Gazette*, his or her nomination shall lapse, provided the returning officer is satisfied of the fact of the death of the candidate".

Amendment of the Regulations

6. The Regulations are hereby amended by insertion of Regulation 5A after regulation 5 of the Regulations:

5A. Election of Council members

The election of council members in terms of the Pharmacy Act, 53 of 1974 shall be conducted by way of an electronic election system or any other form of election system as determined by council.

Amendment of regulation 6**7. Regulation 6 of the Regulations is hereby amended**

- (a) by substitution of regulation 6(1) of the following:

“Procedure for the election

6. (1) If, at the time and date contemplated in regulation 4 (1), the number of validly nominated candidates exceeds the number of members to be elected—

- (a) the returning officer shall, by notice in the *Gazette*, and on the official website of council —

- (i) list the names of the validly nominated candidates in alphabetical order;
- (ii) determine a time and date, not earlier than one month after the date of publication of such notice, by which each pharmacist eligible to vote shall be entitled to lodge a ballot [paper];

- (b) the returning officer shall, at least one month before the date contemplated in subregulation (1) (a) (ii), transmit the following to the registered [address] electronic contact details of each pharmacist eligible to vote whose name appeared in the register at the time and on the date contemplated in regulation 4 (1):

- (i) a [ballot paper in the form set out in Annexure D] list of nominated candidates;
- (ii) a [printed identification envelope in the form set out in Annexure E] secured mechanism as determined by council to cast his or her ballot; and
- (iii) the *curricula vitae* and photographs referred to in regulation 4 (4) (c) and (d).

- (b) Deletion of sub-regulation 6(2).

Amendment of regulation 7

9. The Regulations are hereby amended by substitution of regulation 7 for the following:

"7. Nothing contained in regulation 6 shall preclude the council from providing access to the electronic election system to pharmacists in terms of an electronic management approach, provided such access shall include an authentication process for person who wish to cast their vote".

Amendment of regulation 8

10. The Regulations are hereby amended by substitution of Regulation 8 for the following:

"Voting, counting of, and announcement of results

8. (1) The returning officer shall determine a place, time and date for the commencement of voting, which duration for voting shall be no more than 72 hours.
- (2) Within five (5) days of the close of the voting, the independent monitoring body as appointed in terms of regulation 2(3), shall provide a validation report of the election results to the returning officer, which report shall be made available all to candidates.
- (3) Within one (1) day after the release of the validation report in terms of sub-regulation 8(2) the returning officer shall announce the results of the election.
- (4) The returning officer shall declare the candidates for whom the greatest number of votes have been cast to be elected members of the council; provided that, if the number of votes cast for any two or more candidates is found to be equal and if this equality of votes affects the result of the election, the returning officer shall, in the presence of the independent monitoring body, immediately determine by lot which candidate shall be declared elected.

- (5) (a) Any pharmacist may lodge with the returning officer a substantiated, written objection regarding the election process with the returning officer.
- (b) If an objection referred to in paragraph (a) is not resolved before the next phase of the electoral process, the next phase shall not commence until an independent, arbitrator has resolved the issue.
- (c) When an objection is lodged during the counting process, all counting shall be discontinued immediately until the objection is resolved.
- (d) If an objection referred to in paragraph (c) is not resolved within 1 (one) day of it being declared, an independent arbitrator shall be called to resolve the issue”.

Amendment of the Regulations

11. The Regulations are hereby amended by insertion of regulation 8A after regulation 8 of the Regulations:

“Offence

- 8A** Any person who wilfully interrupts, obstructs or disturbs the proceedings of the elections shall be guilty of an offence and, on conviction, be liable to a fine not exceeding R2 000 or imprisonment for a period not exceeding two years”.

Amendment of regulation 9

12. The Regulation are hereby amended by substitution of regulation 9(2) for the following:

- 9.(2) The returning officer shall keep all **[ballot boxes]** election records in safe custody.

Amendment of Regulations

13. The Regulations are hereby amended by the deletion of Regulation 10.

Amendment of regulation 11

14. The Regulations are hereby amended by substitution of Regulation 11(2) is for the following:

11(2) If a person who carries out his or her duties under the Act or who is **[present at the counting of votes]** part of the election process, obtains knowledge as to the candidate for whom any person has voted, he or she shall not, except in answer to a question lawfully put to him or her in the course of proceedings in a competent court of law, disclose such knowledge to any other person.

Amendment of regulation 12

15. The regulations are hereby amended by substitution of regulation 12(1) for the following:

“Custody of **[documents] records and inspection of **[documents]** records**

12 (1) The returning officer shall retain all election **[documents]** records for a period of 5 years from the date of the declaration of the result of an election and he or she shall thereafter destroy the **[documents]** records unless a competent court of law directs otherwise.

Amendment of regulation 13

16. The Regulations are hereby amended by substitution of Regulation 13 is for the following:

Penalties

13. Any person who—

- (a) induces or procures or attempts to induce or procure any other person to become a candidate or to withdraw as a candidate in any election in consideration of payment or for consideration of any nature;
- (b) becomes a candidate or withdraws as a candidate in any election as a result of payment or consideration of any nature;
- (c) publishes a false statement of the withdrawal of a candidate in an election, knowing such statement to be false;
- [(d) with the intent to cheat, destroys a ballot paper or identification envelope]**
- (e) without due authority supplies [a ballot paper or identification envelope] access to voting to any person;
- (f) withholds or attempts to withhold [the ballot paper] access to voting of any voter, or prevents or attempts to prevent any voter from obtaining [a ballot paper] access to voting;
- (g) with the intent to cheat, votes more than once at any election;
- [(h) with the intent to cheat, brings about or attempts to bring about the issuing of a ballot paper or an identification envelope in terms of regulation 6 (2);]**
- (i) induces or procures or attempts to induce or procure any other person to bring about, with the intent to cheat, the issuing of [a ballot

paper] or an identification envelope] access to voting in terms of regulation 6 [(2)] (1);

- (j) interferes with or attempts to interfere with a voter when that voter is marking a vote, or otherwise attempts to obtain information as to the candidate for whom any voter is about to vote or has voted;
- (k) directly or indirectly, personally or through any other person—
 - (i) makes use or threatens to make use of any force or violence against;
 - (ii) inflicts or threatens to inflict any physical or psychological harm upon; or
 - (iii) does or, threatens to do anything to the disadvantage of,a person in order to induce or compel that person to vote or refrain from voting for a particular candidate or candidates, shall be guilty of an offence and on conviction to a fine of R2 000 or to imprisonment for a period not exceeding two years.

Amendment of regulations

17. Regulation 14 is repealed

Short title

18. These Regulations are called Regulations Relating to the Election of Members of the South African Pharmacy Council: Amendment, 2022